

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2087**

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**Introduced by Assembly Member Levine**

February 17, 2016

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An act to add Article 4 (commencing with Section 2090) to Chapter 1.5 of Division 3 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL’S DIGEST

AB 2087, as amended, Levine. Regional conservation frameworks.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. *The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.*

*This bill would authorize the department, or any other public agency, to propose a regional conservation framework that would be required to contain specified information, including a regional conservation assessment. The bill would authorize the department to approve a regional conservation framework, or approve the framework with amendments, for a period of up to 5 years after certain public meetings and a public comment period regarding the proposed framework have been held and after it finds that the framework meets certain requirements. The bill would authorize a conservation action, as defined,*

*and a habitat enhancement, as defined, implemented in accordance with an approved framework to be used to fulfill, in whole or in part, compensatory mitigation requirements set forth in an incidental take permit issued by the department pursuant to the California Endangered Species Act or compensatory mitigation requirements established by any state or local agency pursuant to the California Environmental Quality Act or any regulatory program within the agency's jurisdiction, as prescribed. The bill would also authorize a conservation action or habitat enhancement implemented in accordance with an approved framework to be used to create mitigation credits under a written mitigation credit agreement between the department and the person or entity.*

~~This bill would authorize the department to prepare or approve, and to adopt and amend, a regional conservation framework that identifies wildlife and habitat conservation needs, guides investments in conservation, infrastructure planning, and compensatory mitigation for impacts to natural resources, and informs infrastructure planning, land use planning, and the design and implementation of public and private projects that affect the condition of species and resources under the jurisdiction of the department. The bill would authorize a conservation action implemented in accordance with an approved regional conservation framework, to be used to fulfill, in whole or in part, compensatory mitigation requirements for impacts to covered species, habitat, and other natural resources, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Article 4 (commencing with Section 2090) is  
2 added to Chapter 1.5 of Division 3 of the Fish and Game Code, to  
3 read:

4  
5 Article 4. Regional Conservation Frameworks  
6

7 2090. (a) The Legislature finds and declares that there is a  
8 need to identify wildlife and habitat conservation needs at a  
9 regional scale, including actions needed to address the impacts of  
10 climate change and other wildlife stressors, in order to guide  
11 investments in conservation, infrastructure planning, *sustainable*

1 *communities strategies, and compensatory mitigation for impacts*  
2 *to natural resources, including impacts to threatened and*  
3 *endangered species, other sensitive species, natural communities,*  
4 *ecological processes, and wildlife corridors.*

5 *(b) The purpose of this article is to promote the conservation*  
6 *of natural resources, including biodiversity and ecological*  
7 *processes, in order to maintain the continued viability of biological*  
8 *communities and to enhance their resiliency to climate change*  
9 *and other threats. In order to further this goal, it is the policy of*  
10 *the state to conserve biological and other natural resources and*  
11 *to identify natural resource conservation needs, including actions*  
12 *needed to promote resiliency to the impacts of climate change and*  
13 *other wildlife and fisheries stressors.*

14 *(c) In enacting this article, it is the intent of the Legislature to*  
15 *promote conservation planning that identifies wildlife, fishery,*  
16 *and habitat conservation needs, including actions needed to*  
17 *promote the resiliency to the impacts of climate change and other*  
18 *wildlife stressors, in order to guide investments in conservation,*  
19 *infrastructure and land use planning, and compensatory mitigation*  
20 *for impacts to natural resources, including impacts to threatened*  
21 *and endangered species, other sensitive species, natural*  
22 *communities, ecological processes, and connectivity.*

23 *2091. For purposes of this article:*

24 *(a) "Areas of Conservation Emphasis" means the biodiversity*  
25 *analysis completed by the department in 2010, or the latest update*  
26 *of that analysis.*

27 *(b) "California Essential Habitat Connectivity Project" means*  
28 *the final report prepared jointly by the department and the*  
29 *Department of Transportation in February 2010.*

30 *(c) "Conservation action" means the permanent protection of*  
31 *habitat, and restoration and management actions on permanently*  
32 *protected habitat that help to offset the impacts of threats to*  
33 *covered species and help to achieve biological goals and objectives*  
34 *for those covered species. A conservation action may include, but*  
35 *is not limited to, a conservation action implemented as part of a*  
36 *natural community conservation plan approved by the department*  
37 *pursuant to Chapter 10 (commencing with Section 2800) of*  
38 *Division 3, purchase of credits from a conservation or mitigation*  
39 *bank approved by the department pursuant to Chapter 7.9*

1 (commencing with Section 1797) of Division 2, or purchase of  
2 credits from an in-lieu fee program approved by the department.

3 (d) “Covered species” means those species within the covered  
4 area that are both of the following:

5 (1) Endangered, threatened, or candidate species pursuant to  
6 this chapter or other sensitive species.

7 (2) Analyzed within and protected by conservation actions set  
8 forth within the framework.

9 (e) “Habitat enhancement” means an action to improve the  
10 quality of wildlife habitat, or to address risks or stressors to  
11 wildlife, that does not involve land acquisition or the permanent  
12 protection of habitat, such as improving in-stream flows to benefit  
13 fish species, enhancing habitat connectivity, or invasive species  
14 control or eradication. A habitat enhancement may include, but  
15 is not limited to, a habitat enhancement implemented as part of a  
16 natural community conservation plan approved by the department  
17 pursuant to Chapter 10 (commencing with Section 2800) of  
18 Division 3, purchase of credits from a conservation or mitigation  
19 bank approved by the department pursuant to Chapter 7.9  
20 (commencing with Section 1797) of Division 2, or purchase of  
21 credits from an in-lieu fee program approved by the department.

22 (f) “Hydrologic Unit Code Watershed” means a watershed as  
23 described and delineated by the United States Geological Survey.

24 (g) “Permanently protect” means doing both of the following:

25 (1) Recording a conservation easement, in a form approved in  
26 advance in writing by the department, or establishing perpetual  
27 protection of land in a manner substantially similar to a  
28 conservation easement and approved in advance in writing by the  
29 department, that prevents development, prohibits inconsistent uses,  
30 and ensures that habitat for covered species is maintained.

31 (2) Providing secure, perpetual funding for management of the  
32 land.

33 (h) “Pressure” means an anthropogenic or natural driver that  
34 could significantly change ecological conditions. Pressures may  
35 be positive or negative depending on intensity, timing, and  
36 duration.

37 (i) “Sensitive species” means any special status species  
38 identified by a state or federal agency, and any species for which  
39 the department has determined that listing as endangered,

1 *threatened, or a candidate is reasonably foreseeable within the*  
2 *term of the framework.*

3 *(j) “Stress” and “stressor” mean a degraded ecological*  
4 *condition resulting directly or indirectly from negative impacts of*  
5 *pressures, for example, habitat fragmentation.*

6 *(k) “USDA Ecological Subsection” means a subsection as*  
7 *described and delineated by the United States Department of*  
8 *Agriculture, the Forest Service and the Natural Resource*  
9 *Conservation Service.*

10 2092. *(a) The department may approve a regional conservation*  
11 *framework pursuant to this article. A regional conservation*  
12 *framework may be proposed by the department or any other public*  
13 *agency.*

14 *(b) The purpose of a regional conservation framework shall be*  
15 *to guide one or more of the following in ways that will enhance*  
16 *the long-term viability of native species, habitat, and other natural*  
17 *resources:*

18 *(1) Identification of wildlife and habitat conservation needs,*  
19 *including actions needed to address the impacts of climate change*  
20 *and other wildlife stressors.*

21 *(2) Investments in natural resource conservation.*

22 *(3) Infrastructure planning.*

23 *(4) Identification of conservation priorities for land use*  
24 *planning.*

25 *(5) Identification of priority locations for compensatory*  
26 *mitigation for impacts to species and natural resources.*

27 *(c) A regional conservation framework shall include all of the*  
28 *following:*

29 *(1) An explanation of the conservation purpose of and need for*  
30 *the framework.*

31 *(2) The geographic area of the framework and rationale for the*  
32 *selection of the area.*

33 *(3) The focal species included in, and their current known or*  
34 *estimated status within, the framework.*

35 *(4) Other important species, habitat, and other natural and*  
36 *seminatural resource conservation elements within the framework*  
37 *area, and an explanation of the criteria, data, and methods used*  
38 *to identify those important conservation elements.*

1     (5) A summary of historic, current, and projected future  
2     stressors and pressures in the framework area on the focal species,  
3     habitat, and other natural resources.

4     (6) Conservation goals and measurable objectives for the  
5     important conservation elements identified in the framework that  
6     address or respond to the identified stressors and pressures.

7     (7) Conservation actions, including a description of the general  
8     amounts and types of habitat that, if restored or enhanced and  
9     permanently protected, could achieve the conservation goals and  
10    objectives.

11    (8) A description of how the conservation actions and habitat  
12    enhancements were prioritized and selected in relation to the  
13    conservation goals and objectives.

14    (9) An explanation of how the framework is consistent with or  
15    complements any natural community conservation plan, habitat  
16    conservation plan, recovery plan, and other conservation or  
17    recovery plan that overlaps with the framework area.

18    (10) A description of how the framework's conservation goals  
19    and objectives provide for adaptation opportunities against the  
20    effects of climate change for species covered by the framework.

21    (11) Incorporation and reliance on, and citation of, the best  
22    available scientific information, and a brief analysis of gaps in  
23    relevant scientific information.

24    (12) A regional conservation assessment that provides context  
25    at an ecoregional or subecoregional scale for the development of  
26    the framework. If a regional conservation assessment has already  
27    been prepared, the regional conservation framework may  
28    incorporate the assessment by reference, and shall update or  
29    supplement the assessment as necessary for the framework. A  
30    regional conservation assessment shall do all of the following:

31    (A) Identify and summarize relevant regional pressures,  
32    stressors, and conservation priorities, including priority  
33    conservation areas and habitat connectivity values, included in  
34    all of the following:

35    (i) Conservation plans, such as the State Wildlife Action Plan  
36    and natural community conservation plans.

37    (ii) Analyses designed to identify areas of high biological  
38    diversity, such as the Areas of Conservation Emphasis.

1     (iii) *Analyses designed to identify areas of high value for habitat*  
2     *connectivity, such as the California Essential Habitat Connectivity*  
3     *Project.*

4     (B) *Identify the best available scientific information and*  
5     *analyses, including geospatial information regarding the*  
6     *distribution of species and natural communities.*

7     (C) *Use spatial analysis to identify ecological relationships*  
8     *between existing protected areas and priority conservation areas.*

9     (D) *Enable and promote consistency among regional*  
10    *conservation assessments throughout California by using standard*  
11    *or prevalent vegetation classifications and standard ecological*  
12    *subdivision classifications for terrestrial and aquatic data.*

13    (E) *Be consistent with approved natural community conservation*  
14    *plans, regional habitat conservation plans, and recovery plans*  
15    *within the ecoregion or subecoregion included in the assessment.*

16    (F) *Briefly assess the climate change vulnerability of identified*  
17    *priority conservation areas.*

18    (G) *Compile input and summary priority data in a consistent*  
19    *format that could be uploaded for interactive use in a Web portal*  
20    *and would allow stakeholders to generate queries of conservation*  
21    *values in subregions within the region.*

22    2093. (a) *The department may prepare or approve a regional*  
23    *conservation framework, or approve the framework with*  
24    *amendments, for a period of up to five years after finding that the*  
25    *framework meets the requirements of Section 2092.*

26    (b) *The level of detail necessary for each regional conservation*  
27    *framework shall be at the discretion of the department and shall*  
28    *be assessed independently for each framework, taking into account*  
29    *the requirements of Section 2092 and the intended uses and scope*  
30    *of the framework. It is the intent of this article to establish general*  
31    *guidelines and requirements that allow sufficient flexibility to*  
32    *develop each regional conservation framework based on the best*  
33    *available information regarding the framework area.*

34    (c) (1) *Prior to submitting a draft regional conservation*  
35    *framework to the department for approval, a public agency*  
36    *proposing a framework shall hold at least two public meetings to*  
37    *allow interested persons and entities to receive information about*  
38    *the draft framework and to have an adequate opportunity to*  
39    *provide written and oral comments. At least one of the public*  
40    *meetings shall be held at a location within the framework area.*

1     (2) Within 30 days of deeming a draft regional conservation  
2     framework complete, the department shall make the draft  
3     framework available to the public on its Internet Web site for  
4     review and comment for a period of at least 30 days.

5     (d) The department shall make all approved regional  
6     conservation frameworks, including all updates to scientific  
7     information and analyses used in a regional conservation  
8     framework, available on its Internet Web site.

9     2094. (a) A conservation action or habitat enhancement that  
10    measurably advances the conservation objectives of an approved  
11    regional conservation framework may be used to fulfill, in whole  
12    or in part, compensatory mitigation requirements for impacts to  
13    species, habitat, and other natural resources, as provided in this  
14    section. To be used for compensatory mitigation, a conservation  
15    action or habitat enhancement shall be implemented in advance  
16    of the impacts.

17    (b) For a conservation action or habitat enhancement identified  
18    in a regional conservation framework to be used for compensatory  
19    mitigation purposes pursuant to this section, the regional  
20    conservation framework shall include, in addition to the  
21    requirements of Section 2092, all of the following:

22    (1) An adaptive management and monitoring strategy for  
23    conserved habitat and other conserved natural resources.

24    (2) A process for updating the scientific information used in the  
25    framework, and for evaluating the effectiveness of conservation  
26    actions and habitat enhancements identified in the framework  
27    offsetting identified threats to focal species and to achieve the  
28    framework's biological goals and objectives, at least once every  
29    five years.

30    (3) Identification of a public or private entity that will be  
31    responsible for the periodic evaluation and for updating the  
32    framework periodically to incorporate the best available scientific  
33    information and analyses.

34    (c) A conservation action or habitat enhancement implemented  
35    in accordance with an approved regional conservation framework  
36    may be used for the following:

37    (1) To fulfill, in whole or in part, compensatory mitigation  
38    requirements set forth in a permit issued pursuant to subdivision

39    (b) of Section 2081 if the department determines that the



1 *conservation action or habitat enhancement meets the requirements*  
2 *of Section 2081.*

3 *(2) To fulfill, in whole or in part, compensatory mitigation*  
4 *requirements established by any state or local agency pursuant to*  
5 *the California Environmental Quality Act (Division 13*  
6 *(commencing with Section 21000) of the Public Resources Code)*  
7 *or any regulatory program within the state or local agency's*  
8 *jurisdiction, if the agency determines that the conservation action*  
9 *or habitat enhancement meets California Environmental Quality*  
10 *Act requirements for mitigation for the potential environmental*  
11 *impacts of a proposed project, as identified in an environmental*  
12 *impact report or a mitigated negative declaration prepared for*  
13 *the project.*

14 *(d) The department shall ensure the long-term durability of a*  
15 *habitat enhancement. If a habitat enhancement is used to provide*  
16 *compensatory mitigation, the habitat enhancement shall remain*  
17 *in effect for at least as long as the impact that is being mitigated.*

18 *(e) A conservation action or habitat enhancement implemented*  
19 *in accordance with an approved regional conservation framework*  
20 *may be used to create mitigation credits under a written mitigation*  
21 *credit agreement between the department and the person or entity,*  
22 *including a state or local agency, that implements the conservation*  
23 *action or habitat enhancement. The mitigation credit agreement*  
24 *shall establish the type and number of mitigation credits created*  
25 *by the conservation action or habitat enhancement and the terms*  
26 *and conditions under which the mitigation credits may be used.*  
27 *The person or entity may create and use, or sell or otherwise*  
28 *transfer, the mitigation credits to offset environmental impacts,*  
29 *upon department approval that the credits have been created in*  
30 *accordance with the agreement. To enter into a mitigation credit*  
31 *agreement with the department, a person or entity shall submit*  
32 *the following to the department for its review, revision, and*  
33 *approval:*

34 *(1) The person or entity's contact information.*

35 *(2) A description of the proposed conservation action or habitat*  
36 *enhancement.*

37 *(3) A location map, address, and size of the site where the*  
38 *proposed conservation action or habitat enhancement will be*  
39 *implemented.*

1     (4) Color aerial and ground-level photographs that reflect  
2     current conditions on the site and surrounding properties.

3     (5) A draft of the proposed mitigation credit agreement that  
4     includes an explanation of how the proposed conservation action  
5     or habitat enhancement will be implemented and how the proposed  
6     mitigation credits will be created and used, including all of the  
7     following:

8         (A) The proposed type and quantity of mitigation credits and  
9         the supporting rationale.

10        (B) A proposed service area defined by a USDA Ecological  
11        Subsection or Hydrologic Unit Code Watershed unit.

12        (C) An explanation of how the proposed conservation action or  
13        habitat enhancement is consistent with the regional conservation  
14        framework, including how the action will help to achieve the  
15        framework's biological goals and objectives.

16        (D) Metrics or indicators by which the proposed conservation  
17        action or habitat enhancement's contribution to achieving the  
18        framework's conservation goals and objectives can feasibly be  
19        measured with existing technology.

20        (E) The proposed landownership of the site of the conservation  
21        action or habitat enhancement.

22        (F) How the site of the conservation action will be permanently  
23        protected and managed in perpetuity, including, if applicable, a  
24        draft conservation easement.

25        (G) How the implementation of the conservation action or  
26        habitat enhancement, including long-term protection and  
27        management of the site, will be funded.

28        (H) A draft of the long-term management plan for the site.

29        (I) A draft long-term monitoring and adaptive management plan  
30        for the site.

31        (J) Drafts of habitat restoration plans and performance criteria,  
32        if applicable.

33        (K) An explanation of how the proposed mitigation credits will  
34        be accounted for, including the specific methods proposed for  
35        reporting and maintaining records of credit creation, release, and  
36        use, sale or transfer.

37     (6) Other information, analysis, and legal or financial  
38     assurances of implementation as the department deems necessary  
39     or appropriate.

1 (f) Nothing in this article is intended to limit or impose  
2 additional conditions on the creation or sale of mitigation credits  
3 by a conservation bank or mitigation bank approved by the  
4 department pursuant to Chapter 7.9 (commencing with Section  
5 1797) of Division 2.

6 (g) The creation of mitigation credits pursuant to this section  
7 from a conservation action or habitat enhancement implemented  
8 within the plan area of an approved natural community  
9 conservation plan shall not duplicate or replace mitigation  
10 requirements set forth in the natural community conservation plan  
11 and shall require the advance written approval of the plan's  
12 implementing entity.

13 (h) The approval of a regional conservation framework pursuant  
14 to this article does not authorize any project or project impacts,  
15 nor does it create any presumption or guarantee that a proposed  
16 project will be approved or permitted or that a proposed impact  
17 will be authorized by any state or local agency.

18 ~~2091. The department may prepare or approve, and may adopt~~  
19 ~~and amend, regional conservation frameworks to do all of the~~  
20 ~~following:~~

21 ~~(a) Identify wildlife and habitat conservation needs, including~~  
22 ~~actions needed to address the impacts of climate change and other~~  
23 ~~wildlife stressors.~~

24 ~~(b) Guide investments in conservation, infrastructure planning,~~  
25 ~~and compensatory mitigation for impacts to natural resources,~~  
26 ~~including impacts to threatened and endangered species, other~~  
27 ~~sensitive species, natural communities, ecological processes, and~~  
28 ~~wildlife corridors.~~

29 ~~(c) Inform infrastructure planning, land use planning, and the~~  
30 ~~design and implementation of public and private projects that affect~~  
31 ~~the condition of species and resources under the jurisdiction of the~~  
32 ~~department.~~

33 ~~2092. A regional conservation framework shall include both~~  
34 ~~of the following:~~

35 ~~(a) A regional assessment that establishes conservation priorities~~  
36 ~~at a regional scale based on habitat, ecological processes, and~~  
37 ~~connectivity values.~~

38 ~~(b) One or more implementation plans that establish~~  
39 ~~conservation goals and objectives based on a regional assessment~~  
40 ~~and identify implementation strategies to achieve some or all of~~

1 the goals and objectives. The purpose of an implementation plan  
2 is to guide investments in conservation, infrastructure planning,  
3 and compensatory mitigation for impacts to natural resources. An  
4 implementation plan may cover some or all of the area included  
5 in a regional assessment.

6 2093. (a) A conservation action implemented in accordance  
7 with an approved regional conservation framework may be used  
8 to fulfill, in whole or in part, compensatory mitigation requirements  
9 for impacts to covered species and habitat, and other natural  
10 resources, as provided in subdivision (b). To be used for  
11 compensatory mitigation, the conservation action shall be  
12 implemented in advance of the impacts.

13 (b) (1) A conservation action may be used to fulfill, in whole  
14 or in part, compensatory mitigation requirements set forth in a  
15 permit issued pursuant to subdivision (b) of Section 2081 if the  
16 department determines that the conservation action provides  
17 suitable mitigation for the impacts of taking authorized under the  
18 permit.

19 (2) A conservation action may be used to fulfill, in whole or  
20 in part, compensatory mitigation requirements established by any  
21 state or local agency pursuant to the California Environmental  
22 Quality Act (Division 13 (commencing with Section 21000) of  
23 the Public Resources Code), if the agency determines that the  
24 conservation action provides suitable mitigation for the potential  
25 environmental impacts of a proposed project, as identified in an  
26 environmental impact report or a mitigated negative declaration  
27 prepared for the project.